

cases in which the parties responsible refuse or neglect to remove the unlawful structure or deposit or to make good the damages suffered should be reported promptly to the Chief of Engineers in accordance with the above. It is the policy not to recommend prosecution when the violation of law is trivial, apparently unpremeditated, and results in no material public injury. Each report recommending prosecution should be accompanied by a full statement of the case and copies of correspondence relating thereto.

(5) The procedure in cases involving injurious deposits is similar to that described for other violations of law except that as the damage caused thereby cannot be repaired readily there will be no reason for serving any notice on the parties responsible for the violations further than to bring to their attention the consequences thereof.

(6) Section 6 of the river and Harbor Act approved March 3, 1905 (33 Stat. 1148; 33 U.S.C. 417) provides that expenses incurred by the Corps of Engineers in all investigations, inspections, hearings, reports, service of notice, or other action incidental to examinations into alleged violations of laws for protection and preservation of navigable waters shall be payable from any funds which may be available for the improvement, maintenance, operation, or care of the waterways or harbors affected. If such funds are not available in sums judged by the Chief of Engineers to be adequate, they shall be payable from any funds available for examinations, surveys, and contingencies of rivers and harbors.

[33 FR 18670, Dec. 18, 1968, as amended at 36 FR 17855, Sept. 4, 1971; 51 FR 45765, Dec. 22, 1986; 53 FR 27512, July 21, 1988]

§ 209.180 Temporary closure of waterway to navigation.

(a) When an application is received for the temporary closure of a waterway for the construction of a structure or the performance of other work in the waterway, the District Engineer will assure himself of the necessity for the closure and arrange after informal communication with any important navigation interests concerned the time and duration of the closure which will enable the operations to be com-

pleted with the least interference with navigation. If there is no question as to the necessity and propriety of the closure, the District Engineer is authorized to inform the applicant as follows: "The Department of the Army will interpose no objection to the closure for a stated period beginning at a specified date: *Provided*, That prior thereto the applicant will notify navigation interests by an advertisement in the press or otherwise as the District Engineer may approve and on the understanding that the waiver of objection does not affect the liability of the applicant for any damages that may arise by reason of the closure." The letter to the applicant will be signed "By Authority of the Secretary of the Army" and distribution made as prescribed for permits.

(b) District Engineers will give careful consideration to the effect of any closure on through navigation. Should coordination with other districts be necessary the case will be forwarded to the Division Engineer for such coordination.

(c) Cases not falling within the authority above conferred will be forwarded to the Chief of Engineers with the recommendations of the Division and District Engineers.

§ 209.190 [Reserved]

§ 209.200 Regulations governing navigable waters.

(a) *Publication of regulations.* (1) Regulations prescribed by or under the direction of the Secretary of the Army to govern navigation and navigable waters, are contained in the Code of Federal Regulations, title 33, Navigation and Navigable Waters, Chapter II.

(2) District engineers (or division engineers if considered preferable by the latter to avoid duplication in cases where the regulations involved apply to more than one district) will distribute copies of departmental regulations to all known interested parties as soon as their publication has been noted in the FEDERAL REGISTER. In the case of regulations applicable to more than one division, distribution will be handled as agreed upon by the division engineers concerned. Under the Administrative Procedure Act (5 U.S.C. 551-

553), publication in the FEDERAL REGISTER shall be not less than 30 days prior to the effective date except as otherwise provided upon good cause found and published with the regulations.

(b) *Navigation regulations.* (1) Section 7 of the River and Harbor Act approved August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) authorizes the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as public necessity may require for the protection of life and property, or for operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. The statute provides for the posting of regulations and punishment for violations.

(2) Section 6 of the River and Harbor Act approved June 13, 1902 (32 Stat. 374; 33 U.S.C. 499) provides that regulations prescribed by the Secretary of the Army may be enforced as provided in section 17 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1153; 33 U.S.C. 413).

(3) District Engineers will take action with respect to regulations prescribed for waterways under their jurisdiction:

(i) To insure that the regulations are brought to the attention of the public.

(ii) To insure that the regulations are properly and fairly administered.

(iii) To recommend any revisions necessary to permit full use of the waterway by the public.

(c) *Danger zones.* (1) The Secretary of the Army has authority to prescribe regulations for the use and navigation of any area of the navigable waters of the United States or waters under the jurisdiction of the United States likely to be endangered by Department of Defense operations. This authority is pursuant to the provisions of Chapter XIX of the Army Act of July 9, 1918, or of section 7 of the River and Harbor Act of August 8, 1917.

(2) On receipt of a request from any element of the Department of Defense or other agency for approval by the Secretary of the Army of regulations establishing danger zones under authority of either Act, the District En-

gineer will, prior to issuing any public notice, make certain that the applicant: (i) Has coordinated its proposed operations with any operations being conducted or contemplated by other agencies in the same area with a view to avoiding interagency conflicts, (ii) has obtained clearance from the proper Regional Subcommittee on Airspace, Rules of the Air and Air Traffic Control (Air Coordinating Committee), where the use of airspace is involved, and (iii) has conducted preliminary discussions with local interests when considered advisable. In the case of proposed danger zones off the Atlantic and Pacific Coasts, the coordination referred to in (c)(2)(i) of this section will include the Commander, Service Force, U.S. Atlantic Fleet, or the Commander, Western Sea Frontier.

(3) The authority to prescribe danger zone regulations must be exercised so as not to interfere with or restrict unreasonably the food fishing industry. Whenever the establishment of a proposed danger zone or restricted area may affect fishing operations the District Engineer will consult with the regional director, U.S. Fish and Wildlife Service, Department of the Interior. Two copies of all notices of applications for the establishment of danger zones and restricted areas will be forwarded to the Chief of Staff, U.S. Air Force. In addition, notices of all applications relating to the establishment of aerial gunnery and bombing areas will be sent to local Army, Navy, and Federal Aviation Agency representatives.

(4) If the use of water areas is desired only for such temporary, occasional, or intermittent periods that operations can be conducted safely without imposing restrictions on navigation, applicants may be informed that formal regulations by the Secretary of the Army are not required. However, proper notices for mariners requesting that vessels avoid the areas will be issued by the District Engineer to all interested persons. Copies will be sent to the Commandant, U.S. Coast Guard, Washington, D.C. 20226 and the Commander, U.S. Naval Oceanographic Office, Washington, D.C. 20390.

(d) *Dumping grounds.* (1) Section 4 of the River and Harbor Act of March 3,

1905 (33 Stat. 1147; 33 U.S.C. 419), authorizes the Secretary of the Army to prescribe regulations to govern the transportation and dumping into any navigable water, or waters adjacent thereto, of dredgings and other refuse materials whenever in his judgment such regulations are required in the interest of navigation.

(2) Section 13 of the river and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407) authorizes the Secretary of the Army to permit the deposit of refuse matter in navigable waters, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, within limits to be defined and under conditions to be prescribed by him. Although the Department has exercised this authority from time to time, it is considered preferable to act under Section 4 of the River and Harbor Act of March 3, 1905 (33 Stat. 1147; 33 U.S.C. 419). As a means of assisting the Chief of Engineers in determining the effect on anchorage of vessels, the views of the U.S. Coast Guard will be solicited by coordination with the Commander of the local Coast Guard District.

(3) Under the authority contained in an Act of Congress to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City of June 29, 1888 (25 Stat. 209; 33 U.S.C. 441), the Supervisor of New York Harbor has established dumping areas in those waters and has prescribed regulations for their use. The provisions of the act are enforced by the Supervisor under the direction of the Secretary of the Army.

(4) In considering requests for the establishment of dumping grounds, District and Division Engineers will give careful consideration to the requirements of navigation and will take action to prevent unreasonable injury to fish and wildlife.

(e) *Public notice and consultation with interested parties.* (1) When applications are received for the promulgation of regulations as outlined in paragraphs (b) through (f), inclusive, of this section, District Engineers will issue public notices to all parties deemed likely to be interested and specifically to the agencies referred to in these paragraphs. The notice should fix a limiting

date within which comments will be received, normally a period not less than 30 days after the actual mailing of the notice. If time is an essential element when adequately explained by the applicant, the District Engineer is authorized to give interested parties a minimum of 10 days after receipt of the notice in which to present protests. A copy of every notice issued will be sent to the Chief of Engineers, Attention: ENG CW-ON.

(2) Copies of the notices sent to interested parties, together with a list of parties to whom sent, will accompany reports on all applications for promulgation of regulations submitted to the Chief of Engineers for necessary action.

(3) In all instances when response to a public notice has been received from a Member of Congress, the District Engineer will inform the Member of Congress of the final action taken on the application.

(f) *Public hearings.* (1) It is the policy of the Chief of Engineers to conduct his civil works activities in an atmosphere of public understanding, trust, and mutual cooperation and in a manner responsive to public needs and desires. To this end, public hearings are helpful and will be held whenever there appears to be sufficient public interest to justify such action. In case of doubt, a public hearing should be held.

(2) Among the instances warranting public hearings are general public opposition to the promulgation of regulations governing the use and navigation of navigable waters. District Engineers will notify the Division Engineer of the need for a hearing, state the proposed arrangements therefor and obtain his concurrence therein. Public hearings will be held in any case when Congressional interests or responsible local authorities make an official and valid request therefor and such action will fulfill the above-stated policy and objectives.

[33 FR 18670, Dec. 18, 1968, as amended at 51 FR 45765, Dec. 22, 1986; 52 FR 24157, June 29, 1987]

§ 209.220 Flood control regulations.

(a) *Local protection works.* On projects authorized subject to specified conditions of local cooperation, no construction is undertaken by the Department